

### **REMARKS**

After entry of this amendment, claims 46-66 will be pending in this patent application, for a total of 21 claims, of which four are independent. Additional claim fees for that number of claims were paid with the preliminary amendment of August 9, 2005; therefore, no additional claim fees are now due.

By this amendment, Applicant has canceled the pending claims without prejudice or disclaimer and has introduced a new set of claims that focus on particular features discussed with the Examiner during a March 18, 2008 teleconference. No new matter has been added. Reconsideration and allowance of this application are respectfully requested in view of the foregoing amendments and the following remarks.

#### **The Telephonic Interview**

On March 18, 2008, the undersigned and the applicant, Kivin Varghese, held a telephonic interview with Examiner Nguyen. During the interview, the nature of the invention was discussed, and the Examiner suggested some claim language that would overcome the rejections of record. Both Applicant and the undersigned appreciate the Examiner's time, consideration, and suggestions. Additional remarks on the substance of the interview can be found below in the discussion of the rejections.

#### **The Rejections**

In the September 13, 2007 final Office Action, then-pending claims 21-25, 27-32, 34, and 43-45 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Murphy, U.S. Patent No. 6,564,380, in view of Meyers, U.S. Patent No. 7,031,931. Additionally, claims 36-40 and 42 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Murphy in view of Bartholomew, U.S. Patent No. 7,069,310. Because all of the rejected claims are canceled, Applicant respectfully submits that the rejections are moot and should be withdrawn. However, Applicant will explain why the rejections should not be extended to the new claims.

New claim 65 recites a cogent summary of one aspect of the invention:

[A system that] allows a user (1) to upload a video clip to [a] server for sharing with other users over [a] computer network, (2) to designate a user-desired fee in connection

with the uploaded video clip, and (3) to collect the user-desired fee from each other user who requests to view the uploaded video clip, the total compensation paid to the user in connection with the video clip comprising at least the user-desired fee multiplied by the number of other users who requested to view the video clip; and provides a video clip listing with an indication of the popularity of the video clip, the indication of popularity of the video clip being based on the ratings of users who have viewed the video clip.

As recited in claim 65, and also in independent claims 46, 56, and 66, aspects of the invention provide methods and systems that allow a user to upload a video clip or other type of media file to a website for sharing with other users over a computer network. In these methods and systems, however, the content is not free. Instead, each user determines how much compensation he or she wants each time another user accesses his or her uploaded content. In a method or system according to an aspect of the invention, at least that “user-desired fee” is collected from each other user who views the media file, and the total compensation paid to any one user in connection with a video clip or other media file that he or she has uploaded comprises “at least the user-desired fee multiplied by the number of other users who requested to view the video clip.” (Of course, more than the user-desired fee may be collected and the excess kept by the operator of the system or method as a profit.) As recited in claim 46, any user may upload a video clip or media file, and any user may pay for and view one.

The elements recited in claim 65 and in the other claims essentially create an online free market for video clips and other media files, in which the sellers determine how much they want for their media files, and the buyers, i.e., the other users who peruse and access the media files, determine whether they wish to pay the offered prices. The system or method operator acts as a facilitator, bringing users together, offering a platform for exchanging the files, and maintaining user profiles, among other tasks recited in the claims.

The recited methods and systems also include another task: they maintain an “indication of popularity” for each video clip or media file that is based on ratings given to the file by those users who have viewed it. That allows the users to determine which

products – i.e., which video clips or media files – are “worth” purchasing, which allows for the information exchange helpful in creating a free market.

During the telephonic interview, the Examiner agreed that if Applicant amended the claims to more clearly recite that the user-desired fee was collected from each other user who viewed the file, in combination with the other features, it would overcome the rejections presently of record.

As was discussed during the interview, the above is not what the Murphy reference discloses. Murphy discloses a system for producing video (e.g., with remote controlled cameras) and distributing that video. This is most clearly shown in FIG. 11 of the reference, in which video moves in one direction from the database to the “web-based clients.” Murphy does not disclose or suggest a system in which any user may upload a video and any user may download one. The Murphy system, in effect, acts as a middleman between different types of video suppliers; its uploaders are video producers, and its customers are large-scale video distributors.

During the course of prosecution of this application, much has been made of FIG. 6 of Murphy, and the corresponding disclosure in columns 12 and 13, of a “pricing list” for the video feeds that are distributed by Murphy. Murphy may disclose a pricing list, but Murphy does not disclose how the prices on the pricing list are set, or who receives the money. In terms of the claim recitations, Murphy does not disclose that an uploading user designates a user-desired fee in connection with each uploaded media file, and that at least that amount is collected from each other user who views the media file. In fact, many of the pricing structures set forth in FIG. 6 are the types of pricing structures that one would offer to large-scale distributors of video, not to individual users.

Murphy also does not disclose establishing an indication of popularity of each media file based on ratings supplied by those who have actually accessed the media file. Instead, Murphy merely discloses in column 14, lines 27-30, that its master feed server may maintain a list of feeds “deemed likely” to be popular (rather than determined to be popular based on actual feedback), and does so only “in order to determine which video feeds are to be multicast to all PoP servers.”

Applicant discussed all of these points with the Examiner during the interview. Furthermore, the Examiner cites the Meyers patent for its disclosure of “ratings,” but as

Applicant discussed with the Examiner, Meyers discloses something very different than what Applicant recites. Meyers discloses a device that allows an individual user to rate music on his or her own personal music player, so that highly rated pieces can be played more often. That has nothing to do with rating media files in a file sharing environment in which the rating of one user influences whether other users choose to view the same file. Therefore, Applicant submits that the references cannot be properly combined. Moreover, even if one were to combine Murphy and Meyers, the result would clearly not be Applicant's claimed invention; in fact, the result of a putative Murphy/Meyers combination would not address all of the shortcomings of the Murphy reference that were identified above.

The Examiner also cites Bartholomew because, as the Office Action states, "Bartholomew teaches system and method for creating and posting media files including limited and predetermined file size before uploading." That feature – that the file size is limited and predetermined – was previously in some of Applicant's independent claims, and is now recited in dependent claims 54 and 62. By placing that limitation in the independent claims, Applicant was trying to illuminate the difference between the video feed distribution system of Murphy and the video clip sharing system recited in Applicant's claims. However, one need not reach the issue of whether or not a video clip is the same as a video feed in order to determine that the Murphy and Bartholomew patents do not render Applicant's claimed invention obvious. In fact, the Murphy and Bartholomew patents do not disclose or suggest Applicant's claimed invention for the far more fundamental reasons described above.

For all of the reasons set forth above, and in view of the agreement with the Examiner, Applicant respectfully submits that the rejections should be withdrawn.

Furthermore, Applicant understands that the Examiner has an obligation to perform a search on the claims that Applicant has now entered. While so doing, Applicant respectfully submits that the Examiner should bear in mind the entire record in this case in evaluating any new references that may come to light.

In particular, Applicant previously submitted evidence that popular file exchange websites (which arose after Applicant's invention) have had difficulty inventing effective methods to "monetize," or make money from video file sharing. That kind of method is,

in essence, what Applicant has invented. Moreover, Applicant's methods and systems make money for both the method or system operator and for the individual users. Applicant views the previously submitted evidence as evidence of nonobviousness, and hopes that the nature of the evidence and of the entire record is more clearly understood in view of the above and the recent Examiner interview.

### **CONCLUSION**

In view of the above, Applicant respectfully submits that this application is in condition for allowance, and a timely Notice to that effect is earnestly solicited. If any additional issues relating to patentability remain, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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